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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONALD JAMES BREWER,) No. CV 06-08286-CAS (VBK)
)
Plaintiff,) MEMORANDUM AND ORDER DENYING
) PLAINTIFF'S MOTION FOR A
v.) PRELIMINARY INJUNCTION
)
S. RICHARDS, et al.,)
)
Defendants.)
_____)

PROCEEDINGS

On December 27, 2006, Ronald James Brewer (hereinafter referred to as "Plaintiff") filed a civil rights lawsuit pursuant to 42 U.S.C. §1983 against Defendants S. Richards; Harold Williamson; William Fletcher; Emiliano Becerril; Troy Crawford; Christopher Jakell; Armando Sosa; and D. L. Smalls in their individual capacities.

On January 7, 2007, the Court issued an Order Directing the United States Marshal's Service to serve Defendants Correctional Sergeant S. Richards; Correctional Officer Harold Williamson; Correctional Sergeant William Fletcher; Correctional Officer Emiliano Becerril; Correctional Officer Troy Crawford; Correctional Sergeant Christopher Jakell; Correctional Officer Armando Sosa and Correctional

1 Lieutenant D. L. Smalls.

2 Defendants filed a Motion to Dismiss Plaintiff's Complaint;
3 Plaintiff filed an Opposition to Defendants' Motion to Dismiss;
4 Defendants filed a Reply and the Court issued a Report and
5 Recommendation on March 21, 2008 granting in part and denying in part
6 Defendants' Motion to Dismiss. On June 3, 2008, United States
7 District Court Judge Christina A. Snyder issued an Order approving the
8 Report and Recommendation.

9 On July 2, 2008, Defendants filed an Answer to Plaintiff's
10 Complaint.

11 On August 28, 2008, Plaintiff filed a "Motion for Preliminary
12 Injunction" and "Declaration of Ronald Brewer in Support of Motion
13 Requesting a Preliminary Injunction." Plaintiff requests that the
14 Court grant a preliminary injunction requiring his immediate transfer
15 from Calipatria State Prison to prevent: (1) interference with
16 Plaintiff's access to Court; (2) Plaintiff's denial of recommended
17 surgery and medication; (3) Plaintiff's denial of access to the law
18 library; and (4) Plaintiff's exposure to retaliation and harassment
19 instigated and/or ratified by Defendants S. Richard and H. Williamson,
20 who were previously employed at this prison. (See Motion at 2.)

21 On September 4, 2008, the Court issued a Minute Order ordering
22 Defendants to file an Opposition or Statement of Non-Opposition to
23 Plaintiff's Motion within 30 days of the date of the Minute Order.

24 On December 17, 2008, the Court issued a Minute Order indicating
25 that Defendants had failed to respond to the Court's previous
26 September 4, 2008 Minute Order and ordered Defendants to file an
27 Opposition or Statement of Non-Opposition to Plaintiff's Motion for
28 Preliminary Injunction within 20 days.

1 On January 6, 2009, Defendants filed an "Opposition to
2 Plaintiff's Motion Requesting Preliminary Injunction; Declaration of
3 J. Vander Borcht in Support of Opposition to Request for Preliminary
4 Injunction."

5 The Motion for a Preliminary Injunction is now ready for
6 decision.

7
8 **STATEMENT OF FACTS**

9 Plaintiff alleges that on June 28, 2006, while Plaintiff was
10 incarcerated at Ironwood State Prison, Defendants Richards, Williamson
11 and fourteen other guards descended on Plaintiff while he was in his
12 assigned cell and told him he was being taken to a facility program.
13 Defendant Williamson placed Plaintiff in restraints and Defendant
14 Richards and Williamson then escorted Plaintiff to a holding cell.
15 While in the holding cell, Defendant Richards informed Plaintiff that
16 his personal property was being packed up for his movement into
17 administrative segregation ("Ad. Seg."). (See Complaint at ¶¶ 1-4.)
18 Plaintiff asked Defendant Richards why he was being transported to Ad.
19 Seg. and Defendant Richards replied for filing staff complaints. After
20 his personal property arrived, Defendant Richards led Plaintiff to the
21 rear of the program office. (Id. at ¶ 6.) Prior to exiting the rear
22 of the office, with Plaintiff in restraints, Defendant Richards
23 punched Plaintiff in the back of the neck and kicked him in the lower
24 back. (Id. at ¶ 7.) Plaintiff never resisted and Defendant Richards
25 acted without warning or provocation. (Id. at ¶ 8.) Defendant
26 Richards then lifted Plaintiff by his jeans and shirt and placed him
27 and his property in the transportation vehicle. (Id. at ¶ 9.)
28 Plaintiff was transported a short distance to the Ad. Seg. Unit, where

1 the Unit Sergeant ordered Plaintiff returned to the "sending
2 facility." (Id. at ¶ 10.)

3 Upon arriving at the "sending facility," Plaintiff began to
4 experience "excruciating pain in his neck and lower back region." (Id.
5 at ¶ 11.) Medical personnel responded to Plaintiff, placed him in a
6 cervical collar, secured him to a backboard, immobilizing him, then
7 took him to the prison infirmary. (Id. at ¶ 13.) At the infirmary,
8 medical personnel determined that Plaintiff should be transferred to
9 an outside hospital for x-rays and cat scans. (Id. at ¶ 14.)
10 Plaintiff was taken to Palo Verde Community Hospital in Blythe,
11 California. (Id. at ¶ 17.)

12 In the emergency room at the hospital, Plaintiff was immobilized
13 with leg restraints, waist restraints, a backboard, and a cervical
14 collar, while he waited for tests. (Id. at ¶ 18.) Defendant
15 Williamson then entered the emergency room and assaulted Plaintiff by
16 strangling him nearly unconscious. (Id. at ¶ 19.)

17 Plaintiff was subsequently airlifted to Riverside County Medical
18 Facility, where an MRI revealed that Plaintiff suffered from two
19 damaged discs in his back. (Id. at ¶¶ 21, 22.) Plaintiff also suffers
20 from severe neck pain, inflamed neck muscles, migraine headaches,
21 lightheadedness, fainting, low back pain, and back spasms as a result
22 of the June 28, 2006 "incident." (Id. at ¶ 24.)

23
24 **PLAINTIFF'S CLAIMS**

25 Plaintiff alleges that the actions of Defendants in using
26 physical force against Plaintiff without need or provocation or in
27 failing to intervene to prevent the misuse of force, was done
28 maliciously and sadistically and constituted cruel and unusual

1 punishment in violation of the Eighth Amendment of the United States
 2 Constitution. (Plaintiff's Complaint at 5, 11.)

4 DISCUSSION

5 In the Ninth Circuit, preliminary injunctive relief is
 6 appropriate "where plaintiffs demonstrate either: (1) a likelihood of
 7 success on the merits and the possibility of irreparable injury; or
 8 (2) that serious questions going to the merits were raised and the
 9 balance of hardships tips sharply in their favor." E and J Gallo
 10 Winery v. Andina Licores S.A., 446 F.3d 984, 990 (9th Cir. 2006)
 11 (quoting S.W. Voter Registration Educ. Project v. Shelley, 344 F.3d
 12 914, 918 (9th Cir. 2003)(en banc). These standards are not separate
 13 tests. Rather, they "represent two points on a sliding scale in which
 14 the required degree of irreparable harm increases as the probability
 15 of success decreases." Prudential Real Estate Affiliates, Inc. v.
 16 P.P.R. Realty, Inc., 204 F.3d 867, 874 (9th Cir. 2000). The scale does
 17 not slide indefinitely, however. "The irreducible minimum ... is that
 18 the moving party demonstrate a fair chance of success on the merits or
 19 questions serious enough to require litigation. No chance of success
 20 at all will not suffice. E and J Gallo Winery, 446 F.3d at 990
 21 (quoting Sports Forum, Inc. v. United Press International, Inc., 686
 22 F.2d 750, 753 (9th Cir. 1982). This standard applies equally to
 23 requests for temporary restraining orders. Lockheed Missile and Space
 24 Co., Inc. v. Hughes Aircraft Co., 887 F.Supp. 1320, 1323 (N.D. Cal.
 25 1995).

26 Petitioner in his Motion requests an immediate transfer from
 27 Calipatria State Prison "to prevent" interference with Plaintiff's
 28 access to Court and the law library, the denial of surgery and

1 medications, and Plaintiff's exposure to retaliation and harassment
2 ratified by Defendants Richard and Williamson, who were previously
3 employed at Calipatria. (See Motion at 2.)

4 On May 11, 2008, Plaintiff alleges he was transferred from
5 Ironwood State Prison to Calipatria State Prison to "thwart" his
6 medical care. (See Plaintiff's Declaration in Support of Motion at p.
7 2.) Plaintiff alleges that Calipatria has denied his pain medication
8 and surgery which has led to undue suffering. (Id. at 2-3.) Plaintiff
9 alleges he has been denied access to the law library in spite of the
10 Court's July 16, 2008 Minute Order requesting that prison officials
11 afford Plaintiff access to the law library. (Id. at 3.) Plaintiff
12 also alleges he has twice been approached by prison employees with
13 their name tags covered informing Plaintiff to end litigation against
14 Defendants Williamson and Richard. (Id. at 3.)

15 On December 20, 2008, Plaintiff filed a "Notice of Change of
16 Address," which indicates Plaintiff has been transferred as of
17 December 16, 2008 from Calipatria State Prison to Southwest Detention
18 Center in Murietta, California. The Court takes notice that
19 Petitioner is currently incarcerated at Blythe County Jail in Blythe,
20 California.

21 Plaintiff's claims in his Complaint are based on incidents that
22 arose while he was incarcerated at Ironwood State Prison. Since the
23 filing of the underlying action, Plaintiff was transferred from
24 Ironwood State Prison to Calipatria State Prison, then to Southwest
25 Detention Center in Murietta, California; and currently resides in
26 Blythe County Jail.

27 Plaintiff's Motion requesting a transfer from Calipatria State
28 Prison is moot as Plaintiff was transferred on December 16, 2008. To

1 establish mootness, defendants have to show that subsequent events
2 have made it absolutely clear that the allegedly wrongful behavior
3 cannot reasonably be expected to recur. Federal Trade Commission v.
4 Affordable Media, LLC, 179 F.3d 1228, 1238 (9th Cir. 1999). In this
5 case, Plaintiff is no longer in the custody of the California
6 Department of Corrections and Rehabilitation. Instead, he is in the
7 custody of the County Jail in Blythe, California. Plaintiff has not
8 indicated that he will eventually return to Calipatria State Prison.

9 Moreover, Plaintiff's Motion for a Preliminary Injunction
10 attempts to include unnamed parties at Calipatria State Prison and the
11 California Department of Corrections and Rehabilitation who are not
12 named as Defendants in the underlying action. Federal courts are
13 courts of limited jurisdiction, and as a preliminary matter, the Court
14 must have before it an actual case or controversy. City of Los
15 Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1669 (1983). If the
16 Court does not have an actual case or controversy before it, it has no
17 power to hear the matter in question. Id. In Zepeda v. United States
18 INS, 753 F.2d 719, 727 (9th Cir. 1983), the Ninth Circuit held that "a
19 federal court may issue an injunction if it has personal jurisdiction
20 over the parties and subject matter jurisdiction over the claim; it
21 may not attempt to determine the rights of persons not before the
22 Court." Under F.R.Civ.P. 65(d), an injunction binds only the parties
23 to the action, their officers, agents, servants, employees, and
24 attorneys, and those persons in active concert or participation with
25 them who receive action notice of the order.

26 Here, Plaintiff's Motion would require the Court to determine the
27 rights of persons and entities not before the Court. Plaintiff's
28 Motion for a Preliminary Injunction does not arise from the same

1 occurrence or subject matter of his Complaint; rather, it is primarily
2 based on unrelated incidents that allegedly occurred at a completely
3 different prison. The Court does not have jurisdiction to enter the
4 order sought, as the case or controversy requirement cannot be met in
5 light of the fact that the issues Plaintiff seeks to remedy in his
6 Motion for a Preliminary Injunction bear no relation to the past
7 events at Ironwood State Prison giving rise to this lawsuit.

8 Accordingly, the Motion for a Preliminary Injunction is **HEREBY**
9 **DENIED.**

10 

11 DATED: March 25, 2009

12 CHRISTINA A. SNYDER
13 UNITED STATES DISTRICT JUDGE

14 Presented this 24th day of
15 March, 2009 by:

16 /S/
17 VICTOR B. KENTON
18 UNITED STATES MAGISTRATE JUDGE